Supreme Court, U.S.
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No. 98-1666

IN THE SUPREME COURT OF THE UNITED STATES

CITY OF SANTA MARIA, ET AL.,
Petitioners,

v.

ESPERANZA RUIZ, ET AL., *Respondents*,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Section 2 of the Voting Rights Act of 1965, as amended, allows consideration of the "extent to which members of a protected class have been elected to office...." 42 U.S.C. 1973. The United States Court of Appeals for the Ninth Circuit held that summary judgment was inappropriate as to the effect of Anglo bloc voting on the success of minority-preferred candidates.

Respondents submit that the Questions Presented are:

1. Whether there should be a trial to resolve disputed facts on the merits of whether Anglo bloc voting usually defeats the choice of Latino voters, and that in weighing the evidence the District Court should pay particular attention to the defeat of minority-preferred minority candidates in multi-seat, multi-vote elections.

2. Whether the unprecedented success of Latino candidates in a post-lawsuit election required trial court fact-finding as to the unusual circumstances surrounding the election.

PARTIES TO THE PROCEEDING

The Petition accurately lists the parties to the proceeding at the time the case was dismissed by the District Court in 1995. Elections are held every two years in Santa Maria. *Ruiz v. City of Santa Maria*, 160 F.2d 543, 546 (9th Cir. 1998). Defendants who are council members are sued in their official capacities, and Plaintiffs intend to move to substitute Defendants to reflect the results of the 1996 and 1998 elections should the case be remanded to the District Court.

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STATEMENT OF THE CASE

The interlocutory procedural posture and intensely factual nature of this case make it a poor vehicle for reviewing the issues raised by Petitioner. Regardless of the outcome of the Petition, the case will have to be remanded for trial of the numerous outstanding disputed facts. Following trial and appeal, this Court would have the benefit of fully-litigated factual findings and legal analysis. Furthermore, Certiorari is unwarranted because the Ninth Circuit decision is consistent with this Court's prior decisions and with the law of the Circuits.

Santa Maria's Petition overstates the holding and the effect of the Ninth Circuit's ruling. The opinion appropriately guides the

District Court on remand for a trial that has been pending for nearly seven years, without compelling any particular conclusion on any issue. Certiorari should be denied.

FACTUAL ISSUES

Petitioners' Statement of Facts demonstrates the factbound nature of this case and the need for trial court resolution of the evidentiary issues prior to this Court's review. Indeed, Petitioner rests support for a number of "facts" on selected deposition and declaration excerpts and argumentative pleadings submitted to the District Court by both sides to support factual contentions at issue prior to the District Court's dismissal of the case. See Petitioners' Appendix 54a-70a, (hereinafter "Pet. App.").[1] Moreover, Petitioners' Statement of Facts takes broad liberties with its portrayal of the "facts" contained in the supporting documentation, a penchant which renders this factually complex case even more inappropriate for determining broad legal issues, and which argues for a fully developed factual record prior to hearing in this Court. Perhaps the best example of unresolved evidence contained in the Petition's statement of facts is a reference to post-dismissal election results – evidence that was

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[1] That Petitioner styled the appended pleading "Statement of Uncontroverted Facts and Admissions," (Pet. App. 54a - 70a) does not render its contents factually binding, and Respondent reserves the right to contest the conclusions therein. Accordingly, Respondents append to this Opposition their responsive pleading filed below -- "Plaintiffs' Separate Statement of Facts in Opposition to Santa Maria's Motion for Summary Judgment." Respondents' Appendix, 1a-36a (hereinafter "Resp. App."), filed January 17, 1996, C.R. 233. Another of Petitioners' Appendices, at 71a-72a, is styled "Santa Maria's Response to Plaintiffs' Separate Statement of Facts in Opposition to Santa Maria's Motion for Summary Judgment," a title which concedes its disputed factual nature.

obviously not in the District Court record, and that was the subject of Petitioner's motion for judicial notice which was *denied* by the Ninth Circuit. *Ruiz v. Santa Maria*, 160 F.2d 543, 548, n.13 (9th Cir. 1998), Pet. App. 7a, n. 13. (Hereinafter, for ease of reference, citations will be to pp. 1a-35a of Petitioners' Appendix, where the *Ruiz* opinion is reproduced.)

The facts set forth in the *Ruiz* opinion demonstrate that the Appellate Court reversed the preclusive District Court rulings to prevent an unjust and unsupportable dismissal of the lawsuit. The Ninth Circuit instructed the lower court to take these facts into account when considering the totality of the circumstances - facts that were omitted from the Petition's Statement of Facts.

First, prior to the lawsuit, no Latino had ever been elected mayor or council member. *Ruiz*, Pet. App. 3a.. While Latino candidates were the first or second preference of Latino voters in each election analyzed, Latino candidates were the least-preferred among non-Latino voters and came in last every time, except in 1994. *Id.* Twelve Latinos ran and lost in city council and mayoral elections from 1972-1992 -- all but two placed last. *Id.*

The long losing streak of Latino candidates ended in 1994, after the District Court postponed a July 1994 trial date, in part because "an informed ruling in this matter requires a review of the results produced by the upcoming Santa Maria election in November 1994." *Id.* at 5a. The first two Latinos in the town's history were elected to the city council. Plaintiffs planned to submit evidence at trial demonstrating that special circumstances surrounded the election -- unprecedented crossover voting, endorsements, financial contributions, and press coverage of the lawsuit -- that made it unrepresentative of the usual effect of the at-large election system on Latino voters' opportunity to elect candidates of choice. Id. at 5a-6a. The District Court dismissed the lawsuit as moot, because of the 1994 election. The District Court rejected Plaintiffs' factual showing of special circumstances for failure to uncover direct evidence that voters or politicians acted

with intent to thwart the lawsuit. *Id.* at 21a. In addition, the District Court granted summary judgment for defendants, holding that the first time election of Latino candidates in 1994, when tallied with the election and re-election of a Latino-preferred Anglo candidate, added up to equal opportunity to participate in the political process for Santa Maria's Latino voters. *Id.* at 18a.

REASONS WHY THE WRIT SHOULD BE DENIED

A. THE POSTURE OF THE CASE IS INTERLOCUTORY, AND THE LEGAL ISSUES ARE INTERTWINED WITH COMPLEX AND DISPUTED FACTS.

Santa Maria's Petition overstates the holding and the effect of the Panel's opinion. The judgment does not dispose of the case on the merits of Plaintiffs' claims. Therefore, regardless of the outcome of this Petition, the case must still go to trial.

The facts are complex, and many remain unresolved. The Ninth Circuit held that Plaintiffs have raised triable issues of fact as to whether Anglo bloc voting usually defeats the choice of the Latino electorate. The *Ruiz* opinion generally does not limit what evidence the District Court may consider, and compels no particular conclusion at trial.[2]

Among the material factual issues presented for resolution at trial will be those regarding candidate preference in the 1988 and 1992 elections (Resp. App. 10a-15a), the unprecedented Anglo political and financial support for Latino candidates in 1994 (Resp.

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[2] The single evidentiary limitation imposed by the Appellate Court is its disallowance of arguments disparaging the qualifications of minority candidates, in response to Defendants' assertion that Latino candidates prior to 1994 "were weak candidates who would have lost even if they were white." *Ruiz,* Pet. App. 25a.

App.3a-4a, 16a-26a), the unprecedented Anglo crossover voting for those candidates in 1994 (Resp. App.17a-19a), the highly polarized voting behavior on a proposition appearing on the 1994 ballot (Resp. App.35a-36a), and whether multivariate analysis accurately estimates voting behavior. (Resp. App. 2a-3a).

Indeed, the Petition's Statement of Facts includes a number of disputed facts and omits many others that were undisputed and central to the Ninth Circuit's reading of the case below. See, *infra*, pp. 2-4.

One example of Petitioner's factually imprecise rendition of key issues is the following statement concerning the composition of the city council: "At least three of the four elected members of the Council at that time [1994] were Hispanic preferences: Maldonado, Centeno, and the Mayor, four if Miyoshi is counted." Petition at p. 7. First, if Petitioner is going to include the Mayor in the equation, then the correct total number is five, not four. *Ruiz*, Pet. App. at 2a. Second, the appended phrase "four if Miyoshi is counted " [as a Hispanic preference] is a non-sequitur, since Miyoshi was neither first nor second choice of Hispanics when he was elected, and his seat was not up for election at all in 1994. *Ruiz*, Pet. App. 28a-29a. Petitioners' statement could lead the unwary reader to believe that four of the four city council members were Hispanic preferences, when in fact the evidence shows no more than is set forth in the *Ruiz* opinion, i.e., the first and only Hispanic council members were Maldonado and Centeno – Hispanic-preferred candidates elected in 1994. *Ruiz*, Pet. App. p. 5a; Resp. App. pp 14-15. Remarkably, to establish the mayor as a Hispanic preference in 1994, Petitioner cites to *Ruiz*, Pet. App. 5a, n.8, which specifically notes that "[t]he record does not contain...a statistical report of the Hispanic and non-Hispanic voting percentages for that election," and to *Ruiz*, Pet. App. 28a-29a, which confirms that no such evidence is in the record.

The two legal issues framed by Petitioner are intricately intertwined with unresolved factual circumstances. Neither are appropriate for review by Certiorari prior to resolution below.

B. THE CIRCUIT OPINION IS CONSISTENT WITH THE DECISIONS OF THIS COURT AND OF THE UNITED STATES COURTS OF APPEALS.

The *Ruiz* opinion is entirely consistent with this Court's precedents and with the views of the Circuits that have addressed the issues raised by Petitioner.

Much of Petitioners' argument is an attempt to pinpoint conflict among cases within the Ninth Circuit. The resolution of intra-Circuit conflict is the purpose of *en banc* review, which was denied by the Ninth Circuit in this case when not a single circuit judge called for a vote to rehear the matter *en banc.* Order, February 23, 1999, Pet. App. 36a-37a). Intra-Circuit conflict is not a ground for this Court's grant of Certiorari.[3]

Both of the challenged holdings simply reverse the preclusive and fatal effect of the District Court's restricted view of the evidence, and remand to allow the evidence to be fully considered

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[3] All of the Ninth Circuit decisions are consistent with the Ruiz opinion, none present holdings contrary to either holding challenged by the Petition. Prior to *Ruiz*, the Ninth Circuit had not addressed the weight to be given the victories of minority-preferred Anglo candidates as compared to the defeat of minority-preferred minority candidates. The sole Ninth Circuit case raising the doctrine of special circumstances, *Valladolid v. City of National City,* 976 F.2d 1293, 1298(9th Cir. 1992) did not require evidence of intentional discrimination as a threshold matter.

consistent with the purposes of the Voting Rights Act, 42 U.S.C. §1973. Neither of the holdings is dispositive of Plaintiffs' claims.

1. Part IV. B. of the Opinion is Consistent With Existing Law, and Provides Appropriate Instructions to Guide the Trial Court in its Analysis of Racially Polarized Voting.

The Petition seeks to delete Part IV. B. of the *Ruiz* opinion which reversed the District Court's dismissal because it was improperly based on a mechanical headcount of Latino-preferred candidates in multi-seat, multi-vote elections. In such an election, Latinos may cast only one vote for the sole Latino candidate, and must either give their vote to an Anglo candidate or withhold it entirely. *Ruiz*, Pet. App. p. 18a. The opinion instructs the District Court that the Anglo candidate (Urbanske) may be considered a minority-preferred candidate. *Ruiz,* Pet. App. 11a-13a, 18a. However, the Opinion further instructs that the repeated and consistent defeat of minority-preferred Latino candidates is more probative of racial bloc voting in multi-seat races. *Ruiz*, Pet. App. 18a-19a. Section IV. B. also instructs the District Court to consider the usual electoral fate of Latino candidates -- who regularly came in last prior to 1994, and whose Anglo support declined from a high of 15.7% in 1988 to 4.6% in 1992. *Ruiz,* Pet. App. at 3a-4a, 18a-19a, 28a. The *Ruiz* Court reasoned:

> "To hold otherwise would doom any Section 2 claim in which white candidates, acceptable to minorities and non-minorities alike, are regularly elected but in which minority candidates, preferred by minorities but unfavored by whites, are consistently defeated. Our rule furthers the Voting Rights Act's goal of protecting the minority's equal opportunity to 'elect its candidate of choice on an equal basis with other voters.' *Voinovich v. Quilter*, 507 U.S. 146, 153 (1993)."

Ruiz, Pet. App. at 17a.

The *Ruiz* instructions are consistent with existing Supreme Court law, which requires "a searching practical evaluation of the past and present reality" with a " functional view of the political process." *Thornburg v. Gingles*, 478 U.S. 30, 45 (1986)(citing S.Rep. No. 97-417, at 30 (1982)). The opinion's rejection of the District Court's "simple mathematical approach – counting the number of successful Hispanic-preferred candidates divided by the number of elections – in its *Gingles* prong three analysis" is consistent with this Court's counsel against the mechanical application of the *Gingles* factors. *Voinovich v. Quilter*, 507 U. S. at 158.

Moreover, this Court's admonition against racial stereotyping that drives the process of race-based gerrymandering in no way hampers the District Court's ability, indeed duty, to determine whether racially polarized voting has rendered the "ability of minority voters to elect their chosen representatives . . . inferior to that of white voters." *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993), citing *Gingles*, 478 U.S. at 49, n.15.

The law among the Circuits is also consistent with the *Ruiz* opinion on this issue. A number of Circuit opinions reflect appraisals of widely differing electoral facts involving minority-preferred Anglo candidates. The Circuits that evaluate elections in which the Anglo candidates are running against each other, or running for multiple seats in elections presenting only one minority candidate, uniformly recognize that racially contested elections are more probative of the presence of Anglo bloc voting. *Vecinos De Barrio Uno v. City of Holyoke*, 72 F.3d 973, 988, n. 8 (1st Cir. 1995); *NAACP v. City of Niagara Falls, N.Y.*, 65 F.3d 1002, 1018 (2d Cir. 1995); *Jenkins v. Red Clay Consol. Sch. Dist.*, 4 F.3d 1103, 1128 (3d Cir. 1993); *Lewis v. Alamance County*, 99 F.3d 600, 610, n.8 (4th Cir. 1996); *LULAC v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993); *Clark v. City of Cincinnati*, 40 F.3d 807, 812

(6th Cir. 1994); *Nipper v. Smith,* 39 F. 3d 1494, 1540 (11th Cir. 1994).[4]

The Tenth Circuit does not explicitly give less weight to non-racially contested elections, but its approach to this question is consistent with the *Ruiz* opinion. The Tenth Circuit cautions that although Anglo versus Anglo elections may be relevant to the presence of racially polarized voting, such evidence is it useful only when accompanied by anecdotal evidence to enable the court to make a "practical evaluation of the extent to which any particular white candidate was, as a realistic matter, the minority voters' representative of choice." *Sanchez v. State of Colorado,* 97 F.3d 1303, 1321 (10th Cir. 1996), citing *Jenkins v. Red Clay Consol. Sch. Dist.,* 4 F.3d at 1129. Implicitly then, the Tenth Circuit agrees that non-racially contested elections may not be as probative to the *Gingles* third prong, and most certainly rejects the tallying approach applied by the District Court in this case.

Petitioner erroneously argues that the opinion below conflicts with Sixth Circuit law. First, Petitioner reaches to distinguish *Clarke v. Cincinnati,* 40 F.3d 807, upon which the opinion below relies, as involving a "complex proportional representation election system not remotely like Santa Maria's system." Petition at p. 15. However, Plaintiffs in *Clark* challenged exactly the same system challenged here, *i.e.*, multiple vacant seats filled at each election by voters who may cast up to the same number of votes as there are vacant seats, with the top vote-getters winning the election in a system with no district or ward residency requirements. *Clarke*

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[4] Although the 8th Circuit has not addressed the question directly, it reviewed only racially contested elections in *Harvell v. Blytheville School Dist., #5,* 71 F.3d 1382 (8th Cir. 1995), over the dissenting view that given the success of African-American candidates, non-racially contested elections should have been examined as well. *Id.* at 1393, n. 2 (Loken, J., dissenting).

v. Cincinnati, 40 F.3d at 809-810. The only difference is that nine council seats were filled at a time in Cincinnati, and only two at a time are filled in Santa Maria. *Id.*

The recent Sixth Circuit case, *Cousin v. Sundquist*, 145 F.3d 818, 823-826 (6th Cir. 1998), continues the Sixth Circuit practice of examining all elections, whether or not racially contested. Indeed, at least one lower court in the Sixth Circuit has interpreted *Cousin* to "implicitly recognize[] that races involving only white candidates, while relevant, are not typically as relevant as black-white elections." *Rural West Tennessee African American Affairs Council, Inc., v. Sundquist*, 29 F. Supp.2d 448, 456 (W.D. Tenn., 1998).

> "In *Cousin*, the Sixth Circuit made it clear that it does not expect all white-white elections to be relevant, but where the record indicates they are, the district court must consider them. Therefore, while a court in this circuit must consider white-white elections, it should place primary reliance on the elections involving a minority candidate." *Id.*

Finally, even Judge Wallace's dissent from this portion of the opinion recognizes that the success of Hispanic-preferred Anglo candidate Urbanske is less probative of voter polarization, because Urbanske was the first choice of Anglos in Santa Maria. "I would determine the level of polarization by considering the success or failure of minority-preferred candidates -- regardless of race -- *who are not preferred by the majority.*" *Ruiz*, Pet. App. 31a (Wallace, J., dissenting) (emphasis added).

The *Ruiz* opinion on this issue is legally sound, and provides guidance to the lower court that is warranted by the facts in this case. Its underlying premise, that candidacies supported by both groups in multi-seat, multi-vote elections are relevant -- but not as illuminating of the effects of Anglo bloc voting as are polarized candidacies -- is consistent with existing law.

2. The Ninth Circuit's Reversal of the District Court's Erroneous Rejection of Plaintiffs' Evidence of Special Circumstances is Consistent With Existing Law.

Part IV. D. of the *Ruiz* opinion reversed the District Court's requirement that Plaintiffs submit proof of voters' or political leaders' intent to thwart the pending lawsuit as a condition precedent to demonstrating that the 1994 election was characterized by "special circumstances." The reversal is not dispositive of Plaintiffs' claims.

The District Court's ruling precluded it from considering the abundant evidence of unusual endorsements, financial contributions, unprecedented Anglo crossover voting, and newspaper coverage of the lawsuit's relationship to the election. *Ruiz,* Pet. App. 5a-6a. Because the District Court's ruling erected a barrier that was inconsistent with the overall purpose of the Voting Rights Act, with the elimination of the intent requirement in the 1982 amendments to that Act, and with Supreme Court discussions of "special circumstances," *Gingles,* 478 U.S. at 51, 57, 76, it was reversed by the Ninth Circuit with instructions to consider all the relevant evidence presented. The appellate remand allows Plaintiffs to go forward with proof that the 1994 election was atypical and therefore not probative of the usual effect of at-large elections on Latino voters' ability to participate in the political process.

The doctrine of "special circumstances" originated from this Court's concern that isolated minority successes, particularly those borne out of elections characterized by unusual circumstances, should negate a usual pattern of Anglo bloc voting in the third prong of a *Gingles* vote dilution inquiry. *Gingles,* 478 U.S. at 57, 76. The list of examples of "special circumstances" included the pendency of litigation, but did not hold that Plaintiffs must prove

discriminatory or even self-preservationist intent on the part of the defendants, politicians, or voters.

The *Ruiz* view of "special circumstances" is consistent with the treatment of the doctrine in the other Circuits. Although other Circuits have noted the relevance of evidence suggesting that political leaders sought to manipulate a lawsuit, none have precluded a claim of "special circumstances" for failure to prove such intent, and one Circuit specifically finds intent irrelevant. *Collins v. City of Norfolk*, 816 F.2d 932, 938 (4th Cir. 1987).

Most of the cases cited in the Petition do not directly address the "special circumstances" doctrine, but merely reflect a struggle in a number of Circuits to grapple with the role of racial intent and causation in applying the "effects" test under Section 2. Those Circuits have adopted a view that proof of vote dilution can be rebutted with proof of non-racial reasons for minority losses. *Vecinos De Barrio Uno v. City of Holyoke*, 72 F.3d at 980-984; *LULAC v. Clements*, 999 F.2d at 850-863; *Nipper v. Smith*, 39 F.3d at 1515-1526. None requires Plaintiffs to prove racial animus on the part of the voters or the jurisdiction, but simply allow Defendants to introduce evidence to rebut the inference of racial bias created by the presence of racially polarized voting. *Uno*, 72 F. 3d at 983; *Nipper*, 39 F. 3d at 1524; *LULAC*, 999 F. 3d at 860. *LULAC* allowed defendants to introduce evidence of partisan affiliation, without taking a position on burden allocation, but noted that requiring affirmative proof of white voters' racial animus would make Section 2 litigation difficult and expensive, and would "facilitate the use of thinly-veiled proxies by permitting, for example, evidence that a minority candidate was regarded as 'unqualified' or 'corrupt' to defeat a claim that white voters' refusal to support him was based on race or ethnicity." *Id.* None of the cases support the preclusive rule of law that the District Court imposed.

Judge Wallace's dissent, like the majority opinion, would consider the evidence of unusual cross-over voting, endorsements,

and financial backing as part of the *Gingles* analysis, whether or not proof of racial animus or intent to thwart the lawsuit is adduced. *Ruiz*, Pet. App. 31a-32a. (Wallace, J., dissenting). Judge Wallace's disagreement with the need for the guidance provided in Section IV. D. of the Panel opinion does not provide a basis under Supreme Court Rule 10 for review by Certiorari.

It is the District Court's preclusion of Plaintiffs' evidence that was maverick, not the Ninth Circuit's remand for trial. The Appellate Court Opinion allows Plaintiffs to proceed at trial unhampered by the impossibly high threshold requirement of proving that voters or political leaders intended to thwart the lawsuit by voting for, endorsing, or contributing to Latino candidates. The opinion is consistent with this Court's rulings and with the law of the Circuits. Plaintiffs should be allowed to proceed to trial with evidence relevant to whether the 1994 election was characterized by special circumstances such that it is not representative of the typical effect of at-large elections on Santa Maria's Latino electorate.

CONCLUSION

Certiorari prior to trial should be reserved for cases in which a District Court would be hampered by conflicting Supreme Court and Circuit law on an important issue necessary to full adjudication. This case is quite the opposite. The Ninth Circuit remands this case with instructions that will aid the trial court in its weighing of the evidence. The Petition does not meet the standards set forth in Supreme Court Rule 10. Therefore, the Petition for Writ of Certiorari should be denied, and the case should proceed toward a long-awaited trial on the merits.

Dated: May 13, 1999
Respectfully submitted,

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

	)	No. CV-92-4879-JMI (SHx)
ESPERANZA RUIZ, *et al.*,	)	**PLAINTIFFS' SEPARATE STATEMENT OF GENUINE ISSUES OF MATERIAL FACTS IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
Plaintiffs,	)	
v.	)	
CITY OF SANTA MARIA, CALIFORNIA, *et al.*,	)	
	)	
Defendants.	)	Hearing Date: January 29, 1996
	)	Courtroom: The Honorable
	)	Judge James M. Ideman

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I. GENUINE ISSUES OF MATERIAL FACT

Pursuant to Local Rule 7.14.2 Plaintiffs submit the following Statement of Genuine Issues of Material Facts which preclude summary judgment in favor of Defendants.

1. Whether Anglo bloc voting usually defeats the candidates of choice of the Hispanic electorate?

Plaintiffs maintain that non-Hispanics have historically been the overwhelming majority of Santa Maria's eligible voters, and that their bloc voting against Hispanic candidates has prevented any Hispanic candidate from ever sitting on the council until the 1994 election. Twice prior to 1994, and only in the context of a two vote election where only one Hispanic was running, did the majority choice -- Thomas Urbanske, an Anglo candidate -- coincide with Hispanic support. Every Hispanic candidate from 1988 to 1994 had been the preference of Hispanic voters, and, until 1994, had come in last among non-Hispanic voters and last overall. See Richard Engstrom August 8, 1995 Report 16-17, Exhibit 1 to Declaration of Richard Engstrom in Support of Plaintiffs Opposition to Defendants' Motion for Summary Judgment (hereinafter "Engstrom Report") The two Hispanics that currently sit on the City Council were elected in 1994, a post-litigation election characterized by special circumstances about which there is much dispute by the parties, and their election does not cure the system of its discriminatory effects. Engstrom Report at 24.

2. Whether under the facts of this case, multivariate analysis accurately estimates voting behavior?

Plaintiffs dispute this assertion because the African American and Asian populations are so small and dispersed in Santa Maria that the faulty methodology used to measure their preferences in the multivariate analysis has led to absurd and unreliable results See Engstrom Report 8-15; Richard Engstrom

"Supplemental Report on Group Divisions in Santa Maria, California" 2-10, Exhibit CC to Declaration of Irma Rodriguez (hereinafter "Rodriguez Dec.") in Support of Plaintiffs Opposition to Defendants Motion for Summary Judgment (hereinafter "Engstrom Supplemental Report").

3. Whether the absence of non-Hispanic Bloc Voting in the 1994 City Council election cures Santa Maria's at-large election system of its dilutive effects?

Plaintiffs contend that given the consistent pattern of vote dilution in the 1988 to 1992 elections and the unique circumstances surrounding the 1994 elections, the results of that election, including the absence of non-Hispanic bloc voting, did not cleanse the at-large system of its dilutive effect on Hispanic votes. See Engstrom Report.

4. Whether the 1994 elections in Santa Maria were surrounded by special, unique circumstances that made the results of the election unrepresentative of Hispanic voters' ability to elect?

Plaintiffs contend that the 1994 election should be disregarded in determining whether racially polarized voting exists in Santa Maria. The circumstances surrounding the 1994 election were a significant departure from any previous election. The Hispanics who got elected received endorsements from influential non-Hispanic political leaders who had never supported a Hispanic candidate in the past; they received an unprecedented amount of financial support from non-Hispanics; they were competing against a "weak" incumbent; Maldonado set a record for the amount of money spent on a council race and outspent opponents by a three to one margin; and Maldonado made statements to the press regarding the lawsuit. Every one of these facts -- individually and collectively -- support a finding that

"special circumstances" were present in the 1994 elections. See #15 below and accompanying citations.

5. Whether by 1998, Hispanic population, voting age citizens and registrants will have increased Hispanic ability to elect at-large such that the discriminatory dilutive effects of the at-large system will be cured in the 1988 at-large election?

This factual issue need only be decided if the Court determines that the presence of two Hispanics on the city council deprives Plaintiffs of the right to a remedy in 1996, because of the chance that district elections will result in overrepresentation. i.e., more Hispanics on the council than the proportion of Hispanic voters. Plaintiffs argue that the correct legal and factual inquiry is whether the election system itself is discriminatory and dilutive, entitling Plaintiffs to a remedy, not whether the first-time election of two Hispanics constitutes proportional representation, and deprives Plaintiffs of a remedy. See Plaintiffs Opposition to Defendants Motion for Summary Judgment, Section IV.E. However, should this court determine this legal issue in favor of Defendants, only then may the factual issue of the projected size of the Hispanic electorate be relevant to whether the at-large system deprives Plaintiffs of an equal opportunity to elect candidates of their choice.

Plaintiffs dispute Defendants' use of population projections and estimations instead of official U.S. Census data, both as legal error, inaccurate, internally contradictory, inconsistent and unbelievable data. See Estrada Report in Response to Peter Morrison's Memorandum on 1995 Population Update for the City of Santa Maria, Exhibit 1 to Declaration of Leo Estrada in Support of Plaintiffs Opposition to Defendants Motion for Summary Judgement (hereinafter "Estrada Report")

6. Whether Plaintiffs are able to prove the first Thornburg prong at the time of each election analyzed by polarization experts in this case?

This factual issue need only be addressed should the Court rule favorably on Defendants' erroneous legal position that Plaintiffs must factually demonstrate an ability to elect in their proposed Thornburg district in 1988, 1990, 1992, 1994. If the Court thus rules, then there will be material, disputed issues of fact as to the following: the accuracy of Census data; the ability to draw a Thornburg district using 1980 Census data; the accuracy of Dr. Morrison's population projections; the use of Plaintiffs' census citizenship figures; the appropriateness of Plaintiffs' methodology for drawing the districts, i.e., whether traditional redistricting principles were violated or subordinated to race-conscious considerations; the appropriateness of Defendants' methodology for re-running prior elections in Plaintiffs' Thornburg district. See Morrison Report; Estrada Report; Dave Ely 1980 District, Exhibit DD to Rodriguez Declaration; Dave Ely August 8, 1995 Report, Exhibit EE to Rodriguez Declaration; Engstrom Supplemental Report.

II. DEPOSITION EXCERPTS DO NOT CONSTITUTE "IRREFUTABLE TESTIMONIAL ADMISSIONS"

Defendants attach deposition excerpts and, in one instance, prior testimony[1] from an unrelated case in another

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[1] Plaintiffs object to the admission of prior trial testimony (cross examination) of Plaintiffs' expert Robert Bob Brischetto from Aldasoro v. Kennerson, Case No. 91-1410B. Although Rule 56(c) authorizes the consideration of a broad range of materials in a summary judgement decision, material that is not admissible or otherwise usable at trial cannot be considered on a motion for summary judgement. *Association for Reduction of Violence v. Hall*, 734 F.2d 63 (1st Cir. 1984)(material which had been held privileged

district, to their Statement of Uncontroverted Facts and Admissions Adverse to Plaintiffs in Support of Santa Maria's Response to October 24, 1995 Order without any legal citation whatsoever. Defendants characterize those statements as "testimonial admissions," [Defs. Facts at p. 3] that are "not refutable and cannot be refuted by any evidence plaintiffs may submit." [Defs. Facts at p. 20]

Defendants are wrong. Basic fundamentals of testimonial and evidentiary presentation include the right of parties to refute, amend, rehabilitate, explain, elucidate any testimony, even to the point of treating their own witnesses as hostile if necessary, within the bounds of court discretion, of course. Indeed, this is the purpose of redirect examination at trial. In the case of deposition testimony, Defendants pull out a few selected statements, including only the responses they believe scored them a few "points," and attempt to elevate those bits and pieces to the status of irrefutable admissions, implying a binding effect on Plaintiffs. Plaintiffs are entitled to refute, dispute, amend, explain any deposition testimony, and to the extent it is necessary and relevant, have done so below.

III. PLAINTIFFS DISPUTE MANY OF THE FACTS DEFENDANTS ERRONEOUSLY CLAIM ARE "UNDISPUTED."

Plaintiffs dispute the accuracy of the following "Undisputed Facts" In Support of Santa Maria's Response to October 27, 1995 Order.

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from discovery was improperly considered in the summary judgement decision) The use of Dr. Brischetto's testimony from a prior case is excludable hearsay which under Federal Rule of Evidence 804(b)(1) is only admissible where the witness is unavailable as a witness. Bob Brischetto remains available to testify in the current litigation, and in fact was deposed by Defendants.

1. Defendants claim that the at-large electoral system in Santa Maria "means that every voter has a say in the election of every Council member." (Statement of Uncontroverted Facts and Admissions Adverse to Plaintiffs in Support of Santa Maria's Response to October 27, 1994 Order, #1, [hereinafter "Defs. Facts"].)

Plaintiffs contend that Hispanic votes are diluted by the operation of the at-large electoral system, so Hispanics do not "have a say" in the election of every council member, in that they do not have an equal opportunity to elect candidates of their choice, due to the dilutive at-large system of electing city council members. See Engstrom Report.

2. Defendants claim that "Santa Maria demographer Dr. Peter Morrison believes that by 1995 Hispanics were a majority of Santa Maria's population and that the Hispanic share of Santa Maria's total population will continue to rise in the future." [Defs. Facts #7].

Plaintiffs' dispute Dr. Morrison's use of population projections and estimations in place of official U.S. Census data. Moreover, Dr. Morrison's data is inaccurate, internally contradictory, inconsistent and unbelievable. See Estrada Report. Plaintiffs' expert, Leo Estrada, contends:

- that Dr. Morrison's conclusions are not adequately supported by his sparse underlying data;
- that considerable caution must be taken when applying Department of Finance data to relatively small geographic units such as Santa Maria;
- that population estimates can be unstable, as evidenced by the Department of Finance's recognition that its 1993 statewide estimates were

too high, and its subsequent decision to lower the overall growth curve;

- that analysts at the Department of Finance have warned its data users that if their estimates of net migration continue to decline, another downward adjustment of overall state estimates may be necessary before the end of this decade;

- that Dr. Morrison has failed to consider whether a 1.2 percent annual growth rate for Hispanics is consistent with other available data;

- that Dr. Morrison's application of the 1980 Hispanic growth rate to the 1990's fails to consider that the 1990 Census did a better job of enumerating Hispanics that did the 1980 Census, and thus a portion of the "growth" between 1980 and 1990 could be due to better enumeration;

- that Dr. Morrison incorrectly generalizes based on statewide and national data to draw specific inferences about Santa Maria demography;

- that Dr. Morrison violates sound demographic principles by using voter registration as an indicator of population growth;

- that Dr. Morrison's use of new housing as a proxy for population growth fails to considers person-per-household patterns, tenancy rates, births and newcomers that are simply absorbed into available housing, and other available data;

See Estrada Report.

Plaintiffs further contend that Dr. Morrison's data mathematically and logically makes no sense. Dr. Morrison relies on data from the Department of Finance that estimate that the 1995 population of Santa Maria is 68,900. If Dr. Morrison is to be believed, 51.7 percent, or 35,621 are Hispanic. This represents a Hispanic population five-year growth of 7,607. But the entire population only grew by 7,616 in those same five years. To accept Dr. Morrison's estimated projections, then, one would have to believe that all but 9 of the net 7616 persons that were added to Santa Maria's population are Hispanic.

Incredibly, Dr. Morrison further opines, based on the location of new housing alone, that a full 96 percent of the population growth occurred outside of Plaintiffs' Thornburg district. Dr. Morrison then would have this court believe that 99.9 percent of the population growth is Hispanic, but that 96% of the overwhelmingly Hispanic growth occurred in predominantly Anglo neighborhoods. See Morrison Report, Appendix 2. Dr. Morrison offers no explanation for this phenomenon, which on its face makes no sense.

3. Defendants claim that the Hispanic registration rate in Santa Maria "likely will continue to rise in the future due to increasing Hispanic population, naturalization, and implementation of the federal motor voter law in California which registers people at the time they obtain or renew their drivers' licenses. [Defs. Facts #8]

Plaintiffs object to the characterization of this statement as an undisputed "fact." Rather, it is mere speculation. This prediction is unsupportable because it is based on faulty data, and especially questionable INS data. See February 7, 1994 Leo Estrada Report, Exhibit FF to Rodriguez Dec.; See also Leo Estrada March 17, 1994 Supplemental Report No. 2 (Revised), Exhibit GG to Rodriguez Dec.

Moreover, Dr. Morrison has not performed the requisite analysis to determine the number of Hispanic eligible voters for 1995, let alone do the calculations that would enable him to project into the future. See October 20, 1995 Deposition Testimony of Peter Morrison 16:3 -- 25:12, Exhibit Z to Rodriguez Dec. (hereinafter "Morrison Deposition")

4. Defendants claim that "In three of the last four City Council elections, the first preference of Hispanic voters was elected: Tom Urbanske in 1988 and 1992, and Abel Maldonado in 1994." [Defs. Facts #10]

Plaintiffs do not dispute that Abel Maldonado received the highest point estimate among Hispanic votes in 1994, and that he was elected. However, Plaintiffs do dispute whether Urbanske was the first preferred candidate of Hispanic voters in 1988 and 1992 and contend that racially polarized voting is present in Santa Maria. Defendants' expert, Dr. Klein, admits that in 1988, the estimates of Hispanic support for Urbanske and the Hispanic candidate Martel are not statistically significant from each other. See April 8, 1994 Deposition Testimony of Stephen Klein 118:22 -- 122:12, Exhibit AA to Rodriguez Dec. (hereinafter "Klein Deposition") Dr. Klein further admits that two-vote elections where one minority is running can be racially polarized, notwithstanding the fact that minority voters may cast one vote for the minority candidate and the other for an Anglo candidate. See Klein Deposition 27:13-23. Thus, the election of Urbanske does not negate a finding of racially polarized voting, because only one of the two seats was racially contested, and Hispanics could only cast one of their votes for a Hispanic candidate. The analysis of the votes cast can identify the two preferences of the Hispanic community, but cannot measure the intensity of the preference. See Engstrom Report.

Moreover, the difference between the estimate for first preference and second preference among the Hispanic electorate in 1988 and 1992 is negligible in the bivariate analysis (a

difference of 3.9% in 1988 and 2.5% in 1992) The analysis of a two-vote election where two seats are vacant can identify the two preferences of the Hispanic electorate, but cannot measure the intensity of the preference. See Engstrom Report.

5. Defendants claim that "Hispanics vetoed the Anglo first preference [in 1994], Anglo encumbent Bob Orach who received only minimal support from Hispanics. [Defs. Facts #11]

Plaintiffs dispute this contention, and its characterization as an undisputed fact. Hispanics did not "veto" the choice of the Anglo community in the manner in which Thornburg's third prong requires proof that a majority voting bloc veto the choice of the minority community. In fact, given the size of the Hispanic population in Santa Maria, no one has ever claimed that Hispanics are or ever were a majority of the community, the eligible voters, registrants, or turnout in any election in Santa Maria. Conversely, no one has ever claimed that non-Hispanics, or Anglos, are or ever were a minority of the community, the eligible voters, registrants, or turnout in any election in Santa Maria. Plaintiffs also dispute this contention because it purports to identify the "anglo" preference, based on faulty multivariate polarization analysis. Engstrom Report.

6. Defendants contend that "Hispanics also elected their preferred candidate for Mayor in 1994, Roger Bunch." [Defs. Facts #11]

Plaintiffs contend this fact is not material, as the 1994 mayoral election was not racially contested.

7. Defendants contend that in 1992, Hispanics vetoed the Anglo second preference, and thus, "both Anglos and Hispanics elected their first and third preferences." .[Defs. Facts #12]

Plaintiffs dispute this contention, and its characterization as an undisputed fact. There was no third "choice" elected in any election, as only two seats were open in each election. [Defs. Facts #3] Hispanics did not "veto" the choice of the Anglo community in the manner in which Thornburg's third prong requires proof that a majority voting bloc veto the choice of the minority community. At no time has any contention been made that Hispanics are or ever were a majority of the community, the eligible voters, registrants, or turnout in any election in Santa Maria. Conversely, no one has ever claimed that non-Hispanics, or Anglos, are or ever were a minority of the community, the eligible voters, registrants, or turnout in any election in Santa Maria. Plaintiffs also dispute this contention because it purports to identify the "Anglo" preference, based on faulty multivariate polarization analysis. See Engstrom Report.

8. Defendants contend that in 1992, the Hispanic point estimates for Castillo and Miyoshi were so close that they received essentially equal support. [Defs. Facts #13]

Plaintiffs contend that to the extent such assertion of fact implies that the multivariate analysis was actually able to measure the voting behavior of Anglos, Hispanics, Blacks and Asians, it is disputed by Plaintiffs. See Engstrom Report. Both Dr. Engstrom's Report and his deposition support Plaintiffs' contention that Castillo was the Hispanic candidate of choice. See Engstrom Report; September 13, 1995 Deposition Testimony of Richard Engstrom pp. 99-100, Exhibit HH to Rodriguez Dec. (hereinafter "Engstrom Deposition") Moreover, Defendants' expert, Dr. Klein, admits that in 1988, the estimates of Hispanic support for Urbanske and the Hispanic candidate Martel are not statistically significant from each other. See Klein Deposition 118:22 - 122:12. Thus, to the extent that these point estimates (that are not statistically significant from each other) are used by Defendants to assert that Hispanics elected their second preference in 1992, they must concede then that Martel could have been the first choice of Hispanics in 1988, not Urbanske, and

thus Hispanics did not elect their first choice in 1988. [See Defs. Facts #10, #12, #14, #15, #16, and #17]

9. Defendants contend that in 1988 and 1992 "Hispanic voters preferred an Anglo who won to the sole Hispanic candidate who lost."

Plaintiffs contend that Hispanics, as did all voters, had two votes in each of the prior elections analyzed. And, with the exception of those voters who did not cast their second vote, Hispanics had two preferences - two votes to cast, but only one Hispanic in the race. When the two Hispanic preferences included Thomas Urbanske, an Anglo candidate, that candidate also received overwhelming Anglo support and was elected. When the Hispanic preference was an Hispanic candidate, that candidate received minimal non-Hispanic support[2] and thus every single Hispanic candidate came in last in the field of candidates. See Engstrom Report; Engstrom Deposition at 101.

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[2] In the four racially-polarized elections analyzed by Plaintiffs' expert prior to 1994,, majority non-Hispanic support for Hispanic candidates ranged from a high of 15.7% in 1988 to low of 4.7% in 1992. See Engstrom Report at 16-17. In Thornburg, white support for black candidates ranged from 8% to 50% in primary elections and from 28% to 49% in general elections, a significantly higher range of support for Black candidates than non-Hispanics have shown for Hispanics in Santa Maria. 478 U.S. at 59.

Even Defendant's expert's multivariate analysis estimates that the most cross-over support that any of the Hispanic candidates received was 15% of the Anglo vote. See Klein Report at 9. That candidate, Mr. Martel, would have still come in last in 1988 even if he had received 100% of the Hispanic vote. (Assuming an 80.9 to 19.1 ratio of non-Hispanic to Hispanic voters (See Morrison Report, p. 16 Table 1), Mr. Martel could only have received votes from 31.8% of the voters. (.809 x 15.7% + .191 x 100%)

Defendants' expert admits that two-vote elections where one minority is running can be racially polarized, notwithstanding the fact that minority voters may cast one vote for the minority candidate and the other for an Anglo candidate. See Klein Deposition 27:13-23. Moreover Dr. Klein also admits that in 1988, the estimates of Hispanic support for Urbanske and the Hispanic candidate Martel are not statistically significant from each other. See Klein Deposition 118:22 -- 122:12. Thus, the election of Urbanske does not negate a finding of racially polarized voting, because only one of the two seats was racially contested, and Hispanics could only cast one of their votes for a Hispanic candidate. The analysis of the votes cast can identify the two preferences of the Hispanic community, but cannot measure the intensity of the preference. See Engstrom Report.

10. Defendants contend that of "eight seats elected in the last four City Council elections, Hispanics elected at least four of their preferences, five if Miyoshi is counted." [Defs. Facts #16]

Plaintiffs contend that in each of these elections prior to 1994, the Hispanic preferred candidate who was Hispanic was not elected, and in fact came in last city-wide every time due to Anglo bloc voting in an at-large election. Twice, and only in the context of a two vote election where only one Hispanic was running, did the majority choice -- Thomas Urbanske, an Anglo candidate -- coincide with Hispanic support. See Engstrom Report. Plaintiffs further contend that the 1994 election was characterized by special circumstances. See #15 below and accompanying citations.

11. Defendants contend that "At least three of the four elected members of the Council are Hispanic preferences: Maldonado, Centeno....Bunch, four if Miyoshi is counted." [Defs. Facts #16]

Plaintiffs contend that the election of Bunch is not material, as the 1994 mayoral election was not racially contested.

Plaintiffs further contend that the 1994 election was characterized by special circumstances. See #15 below and accompanying citations. Plaintiffs dispute the characterization of Miyoshi as an Hispanic preference. Both Dr. Engstrom's Report and his deposition support Plaintiffs' contention that Castillo was the Hispanic candidate of choice. See Engstrom Report; Engstrom Deposition at 99-100. Moreover, Defendants' expert, Dr. Klein, admits that in 1988, the estimates of Hispanic support from Urbanske and the Hispanic candidate Martel are not statistically significant from each other. See Klein deposition, p. 118:22 - 122:12. Thus, to the extent that these point estimates (that are not statistically significant from each other) are used by Defendants to assert that Hispanics elected their second preference in 1992, they must concede then that Martel could have been the first choice of Hispanics in 1988, not Urbanske, and thus Hispanics did not elect their first choice in 1988 or 1992. [See Defs. Facts #10, #12, #14, #15, #16, and #17]

Finally, the fact that Maldonado and Centeno currently sit on the council, by itself is not material. What is material is the factual circumstances surrounding the 1994 election in which they ran.

12. Defendants contend that it is undisputed that "Hispanics clearly exercise considerable influence over City Council Elections in Santa Maria." Defendants further refer to Hispanic voters "defeat[ing] Anglo incumbents," and as the "decisive factor in defeating George Hobbs in the 1994 mayoral election."[Defs. Facts #17]

Plaintiffs dispute this factual contention, and contend that the current at-large system of elections is dilutive of Hispanic votes in Santa Maria. See Engstrom Report.
Plaintiffs also dispute this contention's characterization as an undisputed fact. Hispanics did not "veto" the choice of the Anglo community, or "defeat" candidates in the manner in which Thornburg's third prong requires proof that a majority voting bloc

veto the choice of the minority community. Defendants have never claimed, nor could they so claim, that Hispanics are or ever were a majority of the community, the eligible voters, registrants, or turnout in any election in Santa Maria. Conversely, Defendants have never claimed, nor could they so claim, that non-Hispanics, or Anglos, are or ever were a minority of the community, the eligible voters, registrants, or turnout in any election in Santa Maria. Finally, that Bunch defeated Hobbs in 1994 is not material, as the 1994 mayoral election was not racially contested.

13. "Defendants claim that the 1994 election is more probative of Hispanic voting strength and of the likelihood of Hispanic candidates getting elected that earlier elections in view of increased Hispanic population, registration and turnout since 1988, which is likely to increase further in the future." [Defs. Facts #18]

Plaintiffs dispute this fact, and further contend that the 1994 election was characterized by special circumstances. See #15 below and accompanying citations. Plaintiffs have vigorously contested Defendants' population projections and the faulty analyses upon which they are based. See dispute # 3 above, and accompanying citations.

14. Defendants claim that "Social science research indicates that once minorities exceed 50% of a city's population as is true in Santa Maria, there is no advantage to district elections over at-large elections in electing minorities." [Defs. Facts #18]

Plaintiffs dispute this conclusory statement, and object to the submission of prior testimony by Dr. Brischetto in an unrelated case. Plaintiffs further believe the statement to be immaterial, because Defendants have not proven that Hispanics exceed 50% of Santa Maria's population, and Plaintiffs have vigorously contested such assertion and the faulty analyses upon which it is based. See dispute # 3 above, and accompanying citations.

15. Defendants assert as "undisputed" various statements concerning the 1994 election, and the candidates who ran in that election. [Defs. Facts #19]

Most of the "facts," as distinguished from the conclusory statements and opinions, are not disputed by Plaintiffs. Some of those "facts" support Plaintiffs allegation that the 1994 election was characterized by special circumstances. Additional undisputed facts surrounding the 1994 election are:

The Hispanics who were elected in 1994 received endorsements from influential non-Hispanic political leaders who had never supported a Hispanic candidate in the past; they received an unprecedented amount of financial support from non-Hispanics; they were competing against a "weak" incumbent; Maldonado had set a record on the amount of money spent on a council race and outspent opponents by a three to one margin; and Maldonado had made statements to the press regarding the lawsuit. Every one of these facts -- individually and collectively -- support a finding that "special circumstances" were present in the 1994 elections.

In 1994, for the first time in Santa Maria's history, Hispanic candidates were not the least-preferred among non-Hispanic voters. See Engstrom Report. In 1994, Centeno and Maldonado were the second and third preference of non-Hispanic voters, respectively. Centeno received votes from 35.2 percent of the non-Hispanics voters, while 26.1 percent of non-Hispanic voters supported Maldonado. See Engstrom Report at 17. Incumbent Robert Orach was the first preferred candidate among non-Hispanics, receiving 42.2 percent of their votes, but he received only 1.1 percent of votes cast by Hispanics. Id. at 34. Still, Maldonado beat Orach, for the second seat by a mere 84 votes. Id. at 17.

Estimated Divisions in Candidate Preferences
1994 Councilmanic Election

Candidate	% of Non-Hispanics Casting Ballots	% of Hispanics Casting Ballots
Maldonado	26.1	65.4
Centeno	35.2	39.8
Guevara	1.9	31.6
Minami	9.4	22.3
Walker	3.2	10.6
Watson	1.9	4.2
Benedetti	24.2	4.0
Hosepian	5.5	3.1
Hunt	3.6	2.8
Orach	42.2	1.1
Hollister	10.4	-1.2
Chenoweth	11.4	-1.6

See Engstrom Report at p. 34.

The election of Centeno and Maldonado was the result of unprecedented non-Hispanic cross-over voting. See Engstrom Report at 16 - 17. The greatest non-Hispanic voter support any Hispanic candidate had received since the 1988 election was Felix Martel, who had received support from 15.7 percent of non-Hispanic voters -- less than half what Centeno received. In comparison, 1990 councilmanic candidate Gil Guevara only received 8.6 percent of non-Hispanic votes, and 1992 councilmanic candidate Fernando Castillo received 4.7 percent of non-Hispanic votes. In the 1990 mayoral race, Fernando Castillo received 5.1 percent of non-Hispanic votes while Margie Lopez received 6.6 percent. Id.

Non-Hispanic Support for Hispanic Candidates

Year	Candidate	Percentage
1988	Martel	15.7
1990	Guevara	8.6
1990	Lopez	6.6
1990	Castillo	5.1
1992	Castillo	4.7
1994	Maldonado	26.1
1994	Centeno	35.2

A close examination of the candidates and the unusual events surrounding the 1994 election explain this unprecedented non-Hispanic support for Hispanic candidates.

In 1994, Maldonado was twenty-six years old and had never been involved in any civic, political or community organizations in the city of Santa Maria. See July 19, 1995 Deposition Testimony of Abel Maldonado 35-36, Exhibit Q to Rodriguez Dec. (hereinafter "Maldonado Deposition"). He had no experience running for elected office, not even in high school or college. Id. at 10, 14. He "wasn't a good speaker" and attended only three candidate forums. Id. at 42:15 - 43:2. In his own words: "[n]obody knew Abel Maldonado." Id. at 19:7-10. Moreover, none of the persons who worked on Maldonado's campaign had ever worked on a campaign before. Id. at 28-29, 32-33.

Centeno, on the other hand, began the campaign with higher name recognition than almost all other candidates. See July 7, 1995 Deposition Testimony of Curtis Tunnell 23-24, Exhibit R to Rodriguez Dec. (hereinafter "Tunnell Deposition"). This was due, in part, to his status as the City's former Chief of Police. Id. He had served in the police department for 35 years, the last ten as chief. See Defendants' Statement of Undisputed Facts, # 19. He was even identified on the ballot as "former

police chief." See Engstrom Report at 21; July 7, 1995 Deposition Transcript of Trent Beneditti 43-44, Exhibit W to Rodriguez Dec. (hereinafter "Beneditti Deposition") Centeno had never run for public office before. See July 20, 1995 Deposition Testimony of Joseph Centeno 24, Exhibit S to Rodriguez Dec. (hereinafter "Centeno Deposition"). Both Maldonado and Centeno announced at a public forum that they opposed district elections. See Maldonado Deposition 43-44; Centeno Deposition 55.

Orach was the only incumbent seeking re-election to the city council. Orach was originally a mayoral candidate, but changed his mind when long-time mayor George Hobbs announced his intention to seek re-election. It was the consensus of the lay witnesses during their deposition testimony -- and Defendants admit as uncontested fact #21 -- that Orach's last-minute switch to council candidate hurt him at the polls, greatly lessening the advantage of his incumbency. Still, he lost to Maldonado by only 84 votes.

In spite of his tremendous inexperience, Maldonado had unprecedented political endorsements. In 1994, Curtis Tunnell, a long-term city councilman, endorsed Maldonado. See Tunnell Deposition 5. Tunnell agreed to endorse Maldonado after meeting him two or three times in social settings. Id. at 7-8. Tunnell also encouraged Centeno to run and endorsed his election. Id. at 5, 16. Tunnell had never endorsed or encouraged a Hispanic candidate prior to 1994. Id. at 8-9 Casey Kyle, a former mayor, was on Centeno's campaign committee. See Centeno Deposition 29-30.

Additionally, Harrell Fletcher, a former county supervisor and influential political leader, endorsed Maldonado for the city council. July 19, 1995 Deposition Testimony of Harrell Fletcher 8, Exhibit T to Rodriguez Dec. (hereinafter "Fletcher Deposition"). He introduced Maldonado to influential political and business leaders and offered him advice on all aspects of his

campaign. Id. at 8-12. Fletcher also endorsed Centeno for the city council. Id. at 21 Prior to 1994, Fletcher had never endorsed a Hispanic candidate. Id. at 41-42.

Prior to 1994, George Hobbs, the city's long-time mayor, had never endorsed a Hispanic candidate. July 7, 1995 Hobbs Deposition 70-72. In 1994, he officially endorsed Maldonado after meeting him twice and informally endorsed Centeno. Id. at 61-68, 82-84 George Hobbs' endorsement -- important because he had been mayor for 34 years -- signalled to his supporters that Maldonado was a candidate who was acceptable to him. October 4, 1995 Zacarias Deposition 28, 51, Exhibit U to Rodriguez Dec. (hereinafter "104/95 Zacarias Deposition"); Fletcher Deposition 14-15. George Hobbs indicated in his campaign letter that he endorsed Maldonado. See Exhibit F to Rodriguez Dec. (Hobbs campaign material) Receiving the endorsements of both Hobbs and Tunnell was a coup for the inexperienced Maldonado, and an unusual event. See June 26, 1995 Deposition Testimony of Thomas Urbanske 14, Exhibit L to Rodriguez Dec. According to Harrell Fletcher: "I thought it was kind of nice that he was endorsed by both George Hobbs and Curtis Tunnell who hated each other." Fletcher Deposition 15. He also thought it was important to "have both sides of the political ring in Santa Maria supporting a candidate." Id. at 16. Maldonado prominently noted in his campaign literature and advertisements that he was endorsed by Tunnell, Fletcher, and Hobbs. See Exhibit G to Rodriguez Dec. (Maldonado campaign letter and advertisements).

The Santa Maria Times, which had endorsed two Anglo candidates in each of the three previous two-seat elections, endorsed only one candidate in 1994, the incumbent Orach. See Exhibit H to Rodriguez Dec. (editorial pages from Santa Maria Times showing their 1988, 1990, 1992 and 1994 endorsements). The newspaper provided no endorsement for the other seat in the election.

Maldonado was quoted in the Santa Maria Times, five days before the election -- November 3, 1994 -- as saying that if he were elected it would "show that the city is not racist. Some parties in this lawsuit don't want to see a Hispanic on the city council until after the suit is settled." See Exhibit I to Rodriguez Dec. (11/3/95 Santa Maria Times article entitled "Hispanic candidate gets threatening letter.")

Centeno and Maldonado received more than three times the non-Hispanic financial support than received by any previous Hispanic candidate and, as explained above, received endorsements from Anglo political leaders who had never before endorsed Hispanics.[3] In 1994, Maldonado received $6,625 from non-Hispanic individuals or non-Hispanic owned businesses for his campaign. See Exhibit J of Rodriguez Dec. (summary of racial background of contributors to Hispanic candidates) Centeno also received an unprecedented amount of financial support from non-Hispanics. In 1994, he received approximately $4,550 from non-Hispanic individuals or businesses. Id The amount of financial support provided to Hispanic candidates from non-Hispanics in any previous election had not exceeded $790. Id.

Influential endorsement organizations that had in the past never endorsed a Hispanic did so in 1994. The Committee to Improve North County ("Committee"), an organization comprised of business people and the informal political action committee of the Santa Maria Chamber of Commerce, for the first time endorsed a Hispanic candidate. The Committee's endorsement is important because it signals who the business community supports. See Beneditti Deposition 33-36; 10/4/95 Zacarias Deposition 50 In 1994, they endorsed Centeno. See Centeno Deposition 45, Committee INC also encouraged and supported Maldonado's candidacy. See August 21, 1995 Deposition

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[3] Hispanics remained consistent in their support for Hispanic candidates. See Exhibit C to Rodriguez Dec.

Testimony of Ben Hawkins 17-18, 29, Exhibit X to Rodriguez Dec. (hereinafter "Hawkins Deposition"). Moreover, they issued a press release supporting Maldonado's election -- even though they had not officially endorsed him -- and announcing their endorsement of Centeno. Id.. They also sent a mailer to their members informing them that the board of directors had endorsed Centeno. Id. at 28, 30-31. Committee INC also paid for an advertisement in the Santa Maria Times within a week of the election informing the public of the Centeno endorsement. Id. at 26. Prior to 1994, Committee INC had not endorsed or supported the election of any Hispanic to the city council. See October 9, 1995 Fletcher Deposition 18.

According to Ben Hawkins, the secretary of the group, the board of directors had to convince Centeno to come out of his comfortable retirement to run. See Hawkins Deposition 19-24. Committee INC met in July with Centeno, Maldonado, Roger Bunch and Trent Beneditti but did not meet with other candidates until after September, and then it was only to interview them for possible endorsement. Id. at 21, 25-26.

The Santa Maria Firefighters Political Action Committee ("SMFF") -- although only formed in 1992 -- was also an important endorsement for candidates. See Deposition Testimony of Roger Bunch 25, Exhibit W to Rodriguez Dec. Prior to 1994, the SMFF had not endorsed a Hispanic candidate. See Deposition Testimony of Thomas Crakes 13, Exhibit Y to Rodriguez Dec. In 1994, the SMFF endorsed Centeno. Id. at 9. The SMFF published advertisements in the Santa Maria Times informing the public of the Centeno endorsement, and SMFF members campaigned for him. See Centeno Deposition 10, 46

In 1994, Maldonado spent approximately $36,000 on his campaign for the city council. See Exhibit C to Rodriguez Dec. He loaned himself $16,000. Id. This was three times the highest amount spent on a councilmanic election in Santa Maria history

and three times as much as any other candidate in 1994. See Engstrom Report 21. And yet, he only won by 84 votes.

Moreover, although Dr. Engstrom acknowledged the strength of Centeno's candidacy, it is his opinion that given the consistent pattern of dilution of Hispanic vote in previous elections and the unique circumstances surrounding the 1994 elections, the results of that election did not cleanse the at-large system of its dilutive effect on Hispanic votes. See Engstrom Report.

16. Defendants contend that Abel Maldonado is a young Hispanic businessman and Republican who grew up in Santa maria, whose family has been in Santa Maria for years. He spent more money and put up more signs than anyone else." [Defs. Facts #19]

It is also undisputed that in 1994, Maldonado was twenty-six years old and had never been involved in any civic, political or community organizations in the city of Santa Maria. See Maldonado Deposition at 35-36 He had no experience running for elected office, not even in high school or college. Id. at 10, 14. He "wasn't a good speaker" and attended only three candidate forums. Id. at 42:15 - 43:2. In his own words: "[n]obody knew Abel Maldonado." Id. at 19:7-10 Moreover, none of the campaign workers on Maldonado's campaign had ever worked on a campaign before. Id. at 28-29, 32-33.

17. Defendants claim that "Plaintiff Joe Talaugon "was not surprised Centeno won." [Def. Facts. #20]

Plaintiffs do not dispute this factual contention but contend that Mr. Talaugon's explanation as to why he was not surprised is relevant. Directly following the series of questions and answers that Defendants cite in support of this contention are the more important answers where Mr. Talaugon explains why he was not surprised Centeno was elected. Mr. Talaugon was not

surprised Centeno was elected because, in his view, he received "the Anglo vote." October 4, 1994 Deposition Testimony of Joseph Talaugon 59, Exhibit JJ to Rodriguez Dec. (hereinafter "Talaugon Deposition").

He believes Centeno received support from Anglo voters because he was "their favorite son," because of his law enforcement background and because he "didn't specifically . . . make an issue out of any Latino issue . . ." Id. at 59, 63. Mr. Talaugon was also suspicious of Centeno's candidacy: "Mr. Centeno . . . came from the Board of Trustees of the Hancock College, vacated his seat to run for City Council when the atmosphere in the community was district elections, you know, Latinos not having fair representation, so here comes Mr. Centeno as a candidate, who would, in a sense, be that Latino that would fill -- you know, like I say, 'Well, you know, here's a Latino.'" Id. at 58.

While Centeno may have been an appealing candidate to both Hispanics and non-Hispanics, Mr. Talaugon's opinions reinforce Plaintiffs arguments regarding "special circumstances." Mr. Talaugon believes Centeno won because he received votes from Anglo voters, which he could only do if he did not identify himself with Latino issues. Centeno publicly announced that he opposed district elections and he refused to take a position on Proposition 187. See Centeno Deposition 50, 64-66 Because Centeno had unprecedented support from non-Hispanic political leaders and influential organizations, he was able to receive the unprecedented amount of non-Hispanic voter support.

18. Defendants claim that there is no evidence that "Anglos voted for Maldonado to end the lawsuit, or that Anglos endorsed them or contributed money to their campaigns to end the lawsuit." [Defs. Facts #20]

Plaintiffs contend this statement concerning the absence of certain facts or evidence is irrelevant to this case and this

motion. Plaintiffs are not required to show an intent to moot the lawsuit, by the voters or by the Anglo influential politicians, businessmen and other citizens in order for a court to find that the election of minority candidates is due to "special circumstances." (See, Plaintiffs' Opposition to Defendants' Summary Judgment Motion, Section IV.C.)

19. Defendants claim that "None of the candidates believed that the lawsuit affected the outcome of the 1994 election." [Defs. Facts #20]

While Plaintiffs do not dispute that the candidates did not think the lawsuit affected the outcome of the 1994 election, we do contend that the lawsuit had an impact on the election outcome. The question of whether candidates supported district elections was raised in at least one public forum. Centeno and Maldonado both stated their opposition to district elections. See Centeno Deposition 55, Maldonado Deposition 43-44. Moreover, the lawsuit was mentioned in the local paper just five days before the election. Maldonado was quoted in the Santa Maria Times as saying that if he were elected it would "show that the city is not racist. Some parties in this lawsuit don't want to see a Hispanic on the city council until after the suit is settled." See Exhibit I to Rodriguez Dec. None of the candidates were asked whether Maldonado's quote had an impact on the outcome of the 1994 election. Hilda Zacarias, on the other hand, believed that the coverage did have an impact on the outcome:

> I thought that was a wonderful political move, because if there were any people or if there are still people who would not have voted for him because they were not Latino, he's set himself apart from these other Latino efforts and he's said that 'By voting for me, you're proving that you're not racist,' and I think that's a statement that many people in this city would like to send, even though I feel that doesn't change the reality.

Zacarias Deposition at 100-101 Thus, Plaintiffs dispute this contention.

20. Defendants contend that "newcomer" Hispanics ran against candidates who were "strong" and "experienced," with "longstanding records of service and high name recognition." [Defs. Facts #21]

Most of the "facts," as distinguished from the conclusory statements and opinions, are not disputed by Plaintiffs. To the extent that the "facts" suggest that Hispanics were defeated in prior elections for reasons other than the discriminatory dilutive effect of the at-large system, Plaintiffs dispute this contention. Plaintiffs do not at this time plan to introduce evidence at trial that the winning Anglo candidates were weak or inexperienced, but Plaintiffs do intend to introduce evidence that the Hispanic candidates who ran and were not supported by the non-Hispanic majority were also "strong" and "experienced."

In 1988, there were four candidates for the city council, including Felix Martel, who is Hispanic. Martel had lived in the Santa Maria Valley since 1972, worked in law enforcement, and was active in community service organizations like the Central Coast Coordinating Committee. See August 5, 1993 Deposition Testimony of Felix Martel pp. 5, 7, 10-11, attached as Exhibit K to Rodriguez Dec. (hereinafter "Martel Deposition"). He walked precincts, passed out mailers and posters, did a T.V. commercial and participated in candidate forums. Id. at 26 - 27. Martel received votes from 45.6 % of Hispanic voters and 15.7 % of non-Hispanic votes. See Engstrom Report 6. He was the least preferred candidate of non-Hispanic voters. Id. at 31. Thomas Urbanske and Dan Firth won the two seats to the Council. Martel came in last.

Estimated Racial Division in Candidate Preferences
1988 Councilmanic Election

	Candidate	% of Non-Hispanic Signing-in	% of Hispanics Signing-in
[Elected]	Urbanske	61.4	49.5
	Martel	15.7	45.6
	Snyder	34.6	27.4
[Elected]	Firth	46.7	4.2

See Engstrom Report at p. 31

At a 1990 luncheon sponsored by the Economic Development Association, Mayor George Hobbs made comments about Santa Maria's "Mexican problem. See Exhibit A to Rodriguez Dec. (7/17/90 Santa Maria Times newspaper article describing Hobbs' comments) The mayor's comments motivated the Hispanic community to come together to respond to his attacks upon their community. See March 15, 1994 Deposition Testimony of Hilda Zacarias 62-64, Exhibit U to Rodriguez Dec. A multi-racial coalition seeking an apology from the mayor formed the Committee for the Betterment of the Santa Maria Valley. Id. Mayor Hobbs described the organization as a "semi-secret militant Mexican organization that has as their plan to take over the politics of the state of California within 10 years." See Exhibit B to Rodriguez Dec. (8/8/90 Santa Maria Times article with quote); See also August 23, 1993 Deposition Testimony of George Hobbs 441-442, Exhibit O to Rodriguez Dec.

In the 1990 councilmanic elections, there were five candidates, one of whom was Hispanic. Gil Guevara spent over $7,000 in his campaign to get elected. See Exhibit C to Rodriguez Dec. (summary of campaign expenditures and donations) At the time, he was a member of the Planning Commission and ran his own marketing firm. See Deposition Testimony of Gil Guevara 11-12,

21-22, Exhibit M to Rodriguez Dec. Guevara, a Republican, had been active in the Santa Maria Valley promoting Pete Wilson's U.S. Senate campaign and first run for the Governor's seat in 1990. Id. at 10. Guevara has resided in Santa Maria since the early 1970s. Id. at 10.

Guevara walked precincts, advertised, sent mailers, and attended all the forums. Id. at 30-33, 41-42. He also received the endorsement of the Committee for the Betterment, an endorsement he did not seek because he feared that Hobbs' opposition to the group would hurt his chances with non-Hispanic voters. Id. at 37-38. He stressed leadership, affordable housing, traffic, and child care issues. Id. at 33. Guevara was the overwhelming choice of the Hispanic voters; he received 66.2 % of their votes. See Engstrom Report at 7. He was the least-preferred among non-Hispanics, however, and only received 8.6 % of non-Hispanic votes, less than one-third the vote for any other candidate. Id. at 32. Robert Orach and Curtis Tunnell won the two seats.

Estimated Racial Division in Candidate Preferences
1990 Councilmanic Election

	Candidate	% of Non-Hispanic Signing-in	% of Hispanics Signing-in
	Guevara	8.6	66.2
	Engel	27.2	23.1
	Droegemeier	26.3	20.5
[Elected]	Tunnell	49.0	12.8
[Elected]	Orach	48.4	8.7

See Engstrom Report at p. 32.

In the mayoral race, Margie Lopez and Fernando Castillo both sought to unseat George Hobbs, who had been mayor for almost thirty years. Another candidate, Rod Rodenberger, withdrew

from the race just four days after filing his candidacy papers -- two and one-half months before the election. See Exhibit D to Rodriguez Dec. (8/13/90 Santa Maria Times article discussing Rodenberger withdrawal). His name still appeared on the ballot.

Margie Lopez outspent her opponents handily. She raised over $11,000 while George Hobbs raised about $700.[4] See Exhibit C to Rodriguez Dec; George Hobbs July 7, 1995 Deposition Testimony 33-34, Exhibit O to Rodriguez Dec. She walked precincts, advertised on the radio, passed out campaign literature and was well known in the Hispanic community because of her participation in many community-based groups. See Deposition Testimony of Margie Lopez 28 -30, 33-36, 60, 62, 84 Exhibit N to Rodriguez Dec. (hereinafter "Lopez Deposition") Lopez received an overwhelming amount of support from Hispanic voters; 42.6 % cast ballots for her. See Engstrom Report at 4. On the other hand, non-Hispanics were unified in opposition to her candidacy; she only received votes from 6.6 percent of non-Hispanic voters. Id. at 7.[5]

Fernando Castillo was a conservative businessman who had the support of agri-business. See Deposition Testimony of Fernando Castillo 7, 10, 54, Exhibit P to Rodriguez Dec. (hereinafter "Castillo Deposition") In his campaign, he stressed the issues of state water, affordable housing, and latch-key kids. Id. at 55. He walked

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[4] George Hobbs took pride in the fact that the only campaigning he did -- aside from attending some candidate forums -- was to put a campaign mailer in mailboxes the week before the election. See 8/23/93 Hobbs Deposition 370 -375, 409-410, 426-427, 430. Because Hobbs never filed any financial disclosure forms, it is unclear how much money he actually raised, but he believes that he usually spent around $700. See Hobbs July 7, 1995 Deposition Testimony 40.

[5] Margie Lopez also felt that Hobbs' statements impacted her ability to garner non-Hispanic votes. See Lopez Deposition 80-81.

precincts all over town, distributed mailers, advertised on radio, television, and in newspapers. Id. at 20-21. He received the endorsement of the Young Republicans, and spent over $5,000 on his campaign. Id. at 19, 54; Exhibit C to Rodriguez Dec. As a result of his efforts, he received 28.3 % of the vote from Hispanic voters and 5.1 % from non-Hispanic voters. Engstrom Report at 30.

In comparison, George Hobbs, who won re-election, did not walk precincts, and only sent out one mailer. See Hobbs Deposition 370-375, 409-410, 426-427, 430, He received 13.3 % of the votes from Hispanics and an overwhelming 71.4 % from non-Hispanic voters. See Engstrom Report at 30.

Rod Rodenberger, who had not run a campaign and had formally withdrawn from the mayoral race two months before the election, received 16.9 percent of the vote from non-Hispanics' more than twice the support provided Lopez and three times as much as Castillo, despite their strong efforts. Id.

Estimated Racial Division in Candidate Preferences
1990 Mayoral Election

	Candidate	% of Non-Hispanic Signing-in	% of Hispanics Signing-in
	Lopez	6.6	42.6
	Castillo	5.1	28.3
	Rodenberger	16.9	15.8
[Elected]	Hobbs	71.4	13.3

See Engstrom Report at p. 30.

In 1992, Fernando Castillo was one of seven candidates seeking a seat on the city council. Castillo spent about $1600 on his campaign. See Castillo Deposition 54; Exhibit C to Rodriguez Dec. In 1992, as in 1990, the issue of the "Mexican problem" was raised,

this time by Toru Miyoshi. Miyoshi produced and distributed a flyer stating his commitment to address the "Mexican problem." See Exhibit E to Rodriguez Dec.(copy of Miyoshi flyer) Castillo felt that the media made this a prominent issue. See Castillo Deposition 24-26, Despite the fact that he received endorsements from pro-life organizations, that the issue was an important one in the campaign, and that the other candidates had the same position, Castillo came in last. Id. at 34-36. As in 1990, non-Hispanics overwhelmingly disapproved of his candidacy and only provided him with 4.7 % of their votes, about one-quarter of the amount of support for Stephen Jerger who was the next-to-last preferred candidate and who spent even less money on his campaign. See Engstrom Report at 7, 33; Exhibit C to Rodriguez Dec. In fact, Castillo received less votes from non-Hispanics in 1992 than he had in 1990. Engstrom Report at 30, 33. Hispanics, on the other hand, provided Castillo with 35.9 percent of their votes, a higher level of support than he had received in 1990. Id. at 7. As in the previous election, the non-Hispanic voters, who cast 82.1 % of the ballots in this November election, vetoed the Hispanic candidate favored by the Hispanic voters. Id. Urbanske and Miyoshi won the two seats on the council.

Estimated Racial Division in Candidate Preferences
1992 Councilmanic Election

	Candidate	% of Non-Hispanic Signing-in	% of Hispanics Signing-in
[Elected]	Urbanske	50.4	38.4
	Castillo	4.7	35.9
[Elected]	Miyoshi	35.5	31.5
	Anderson	12.1	28.3
	Varni	28.3	12.8
	Firth	36.4	-4.7
	Jerger	13.3	-1.1

See Engstrom Report at p. 33.

Defendants would explain these widely divergent voting patterns as simply a reflection of candidate qualities. In other words, they believe that Hispanics lost from 1988 to 1992 because they were not good candidates and because they faced strong opponents.[6] See Def.'s OSC Brief at 13. This argument only supports the existence of the racially polarized voting that the Voting Rights Act prohibits. Hispanics perceived the candidacies of Martel, Guevara, Lopez, and Castillo as strong and provided them much support. Non-Hispanics, on the other hand, did not so view them.

Finally, Martel was not a "newcomer" to the community. Martel had lived in the Santa Maria Valley since 1972, worked in law enforcement and was active in community service organizations, like the Central Coast Coordinating Committee. See Martel Deposition 5, 7, 10-11. Additionally, Lopez, while not a native of Santa Maria, had been very active in community organizations. See Lopez Deposition 28-30, 33-36, 60, 62.

21. Defendants contend that in 1994 Orach "hurt himself by first declaring for mayor but then, when George Hobbs who people thought was retiring announced for mayor, Orach changed his mind and declared for council." [Defs. Facts #21]

Plaintiffs do not dispute this fact, and indeed believe that it supports their position that the 1994 election is not indicative of

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[6] Defendants argue that the election of non-Hispanic candidates and the losses of Hispanic candidates are due to non-racial reasons: Hispanic candidates did not run viable campaigns. This is an affirmative defense to the polarization analysis presented by Plaintiffs, which Defendants have the burden of proving on a motion for summary judgment. Continental Airlines Inc. v. Intra Brokers, Inc., 24 F.3d 1099, 1103 (9th Cir. 1994). The viability of the Hispanic candidacies is a question of fact which Plaintiffs dispute. Thus, as to this defense, there exists a genuine issue of material fact precluding summary judgment.

Hispanics' ability to elect at-large. Despite the unusual and unprecedented endorsements for Maldonado, despite the previously unheard of amount of money spent by Maldonado, despite the fact that Orach "hurt himself," in the election, Maldonado only beat Orach by 84 votes. Orach "hurting himself" is one of the special circumstances alleged by Plaintiffs in the 1994 election.

22. Defendants claim that "Non-Hispanics or Anglos would be a majority of the voting age citizens in the other three districts." [Defs. Facts #22]

Plaintiffs do not at this time dispute this fact, although it may be possible to draw two Thornburg districts in Santa Maria, and the statement would no longer be true. However, Plaintiffs contend that Defendants' contention is legally irrelevant to the issues to be determined at trial and in this summary judgement motion.

23. Defendants make factual claims about the pre-1994 Hispanic registration rates in Plaintiffs' Thornburg district. [Defs. Facts #23]

Plaintiffs contend that Defendants' contention is legally irrelevant to the issues to be determined at trial and in this summary judgement motion.

24. Defendants claim that no vote dilution occurred in the 1994 election. [Defs. Facts #24]

Plaintiffs do not dispute this fact. No vote dilution occurred in the 1994 election because for the first time ever, the majority electorate (non-Hispanics) did not bloc vote against the Hispanic candidates. Plaintiffs do contend that the 1994 election is a post-litigation election characterized by special circumstances about which there is much dispute by the parties, and their election does not cure the system of its discriminatory effects. See Enstrom Report and #15 above and accompanying citations

25. Defendants claim that Hispanics in Santa Maria and in the state strongly opposed Proposition 187, and that Proposition 187 was nonetheless approved in Santa Maria and in Plaintiffs' Thornburg district. [Defs. Facts #25]

Plaintiffs do not dispute that Hispanics strongly opposed Proposition 187 in Santa Maria and statewide, and that Proposition 187 nonetheless passed in Santa Maria. Plaintiffs believe that this fact supports Plaintiffs' contention that non-Hispanic bloc voting vetoes the choice of the Hispanic community, that the 1994 vote on Proposition 187 is further evidence that despite the special circumstances surrounding the 1994 city council election, voting in Santa Maria continues to be highly polarized, and that the election of two Hispanics did not cure the system of its discriminatory effect on Hispanics. Hispanics clearly do not have the ability to elect at-large absent special circumstances, as evidenced by the passage of Proposition 187 despite overwhelming cohesive opposition by Santa Maria's Hispanic voters. See Engstrom Report.

Plaintiffs do dispute that Proposition 187 also passed in Plaintiffs Thornburg district, because of the unsound methodology used by Defendants' expert, Dr. Morrison, in recalculating prior elections in a hypothetical district. When precinct lines cross the hypothetical district lines, i.e. when only a piece of any given precinct is within the district, Dr. Morrison looks at a map, and "eyeballs" the precinct to decide whether to assign 25%, 50%, or 75% of the precincts' votes to the district. He then uses that percentage to assign a portion of the votes to the district, without regard to whether the precinct's voters inside the hypothetical district voted any differently from those outside the hypothetical district. See April 11, 1994 Deposition Testimony of Peter Morrison pp. 98-99, Exhibit II to Rodriguez Dec.; Morrison Deposition at 78; Engstrom Supplemental Report.

Plaintiffs further contend that using results from an at-large election and imposing them on a single member district is inappropriate. It cannot accurately reflect the way the Hispanic

electorate will vote when given the effective opportunity to elect a preferred Hispanic candidate without being defeated by Anglo bloc voting in an at-large election. See Engstrom Supplemental Report.

26. Defendants claim that neither Maldonado nor Centeno live in plaintiffs' Thornburg district. [Defs. Facts #26]

Plaintiffs do not dispute this fact, but claim that it is legally irrelevant to the issues to be decided in this motion and in this case.

IV. CONCLUSION

For the reasons stated above, there exists genuine issues of material fact to be resolved in this case. The court should deny Defendants' motion for summary judgment.

Respectfully Submitted,

/s/

Irma Rodríguez
Attorney for Plaintiffs